WET KET & ANOR

v.

PEJABAT DAERAH & TANAH TEMERLOH & ANOR

HIGH COURT MALAYA, TEMERLOH
AKHTAR TAHIR JC
[ORIGINATING SUMMONS NO: 25-12-2007]
8 MARCH 2010
[2010] CLJ JT(1)

CONSTITUTIONAL LAW: *Right to property - Aboriginal peoples' rights over land - Land office refused grant of water and electricity supply - Whether land an "aboriginal inhabited place" recognised by government - Whether decision of land office valid - Aboriginal Peoples Act 1954, s. 2*

ADMINISTRATIVE LAW: *Judicial review - Decision of land office to refuse grant of water and electricity supply - Land occupied by aborigines - Whether land an "aboriginal inhabited place" recognised by government - Whether decision of land office valid - Aboriginal Peoples Act 1954, s. 2*

STATUTORY INTERPRETATION: *Construction of statutes - Aboriginal Peoples Act 1954 - Section 2 - Interpretation of "aboriginal inhabited place" - Land inhabited by aboriginal community where gazette notification not required - Whether government approval still required to recognise land as "aboriginal inhabited place"*

This was an application for judicial review by the applicants aborigines against the decision of the Temerloh Land Office in refusing the grant of water and electricity supply to a building on land occupied by them. The land office based its decision on the ground that the land was not an aboriginal reserve under the Aboriginal Peoples Act 1954 ('the Act') and issued a notice under s. 425 of the National Land Code for trespass of government land. The applicants argued that the land had been occupied by them and their forefathers since 1920 and accordingly was an "aboriginal inhabited place" under s. 2 of the Act.

Held (dismissing the application):

(1) Any provision of Federal Law must be read subject to the Federal Constitution. In matters of land, the Federal Constitution has conferred various powers exclusively to the

Federal or State Government. The Federal Constitution does not confer powers upon any individuals or groups of people in matters relating to land. All matters relating to land should be decided by the Federal or State Government. (para 7)

(2) A person or a group of persons cannot take upon themselves to determine the status of land occupied by them. The status of any land has to be recognised by either the Federal or the State Government. (para 8)

(3) Although the land need not be declared as an "aboriginal inhabited place" by notification in the Gazette, nevertheless there should be some sort of confirmation or approval from the Federal or State Government recognising the land as such. The Act itself enacted various provisions where the approval of the State Authority or the Director General was required even after the land had been recognised as an aboriginal land. In the present case, as there was no such approval or recognition of the land as an "aboriginal inhabited place", the decision of the land office was appropriate in the circumstances. (paras 9, 10 & 11)

Legislation referred to:
Aboriginal Peoples Act 1954, ss. 2, 8, 9, 15
National Land Code, ss. 4(2)(a), 425

For the applicants - Lee Swee Seng (Kenny Ng Bee Ken, Annou Xavier with him); M/s Lee Swee Seng & Co
For the respondent - Kamal Azira Hassan SFC

Reported by Usha Thiagarajah

JUDGMENT

Akhtar Tahir JC:

[1] The applicants in this case are of Orang Asli descent who have applied to quash the decision of the Temerloh Land Office in refusing to grant supply of water and electricity on a building constructed on the land claimed to be a land reserved for the Orang Asli and resided upon by the applicant and their forefathers since 1920.

[2] The ground of refusal by the Land Office is that the land has not been reserved according to the provisions of the Orang Asli Act 1954 (Editor's note: Aboriginal Peoples Act 1954). The Land Office had thereby given a notice under s. 425 of the National Land Code for trespass of government land.

[3] The sole question that needs to be determined here is the status of the land upon which the said building has been erected. The status of the land will determine whether provisions of the National Land Code apply.

[4] Section 4(2)(a) of the National Land Code is clear on this:

> Section 4: Savings
>
> (2) Except in so far as it is expressly provided to the contrary, nothing in this Act shall affect the provisions of:
>
> (a) any law for the time being in force relating to customary tenure;

[5] In the interpretation provision of the Orang Asli Act 1954 there has been stated three categories of land as follows:

> 2. In this Act, unless the context otherwise requires -
>
> "aboriginal area" means an aboriginal area declared to be such under this Act;
>
> "aboriginal inhabited place" means any place inhabited by an aboriginal community but which has not been declared to be an aboriginal area or aboriginal reserve;
>
> "aboriginal reserve" means an aboriginal reserve declared to be such under the Act;

[6] The applicants' counsel while conceding that the land does not fall under "aboriginal area" or "aboriginal reserve" argues that it falls under "aboriginal inhabited place" by virtue of the place being occupied by the applicant and their forefathers since 1920.

[7] In my opinion any provisions of the Federal Law must be read subject to the Federal Constitution. In matters of land the Federal Constitution has conferred various powers to only the Federal Government or the State Government. It is to be noted that the

A Federal Constitution does not confer powers upon any individuals or groups of people in matters relating to the land. In short all matters relating to land should be decided upon by the Federal Government or the State Government.

B **[8]** As an elaboration, it is my opinion that a person or a group of persons cannot take upon themselves to determine the status of a land occupied by them. The status of any land has to be recognized by either the State Government or the Federal Government explicitly.

C **[9]** In my opinion although "aboriginal inhabited place" need not be declared as such by notification in the Gazette, nevertheless there should be some sort of confirmation or approval from the State or Federal authority recognizing the land as an "aboriginal inhabited place".

D **[10]** The Orang Asli Act 1954 itself enacts various provisions where the approval of the State Authority or the Director General is required even after the land has been recognized as an aboriginal land.

E Section 8

8. (1) The State Authority may grant rights of occupancy of any land not being alienated land or land leased for any purpose within any aboriginal area or aboriginal reserve.

F (2) Rights of occupancy may be granted -

(a) to:

G (i) any individual aborigine;

(ii) members of any family of aborigines; or

(iii) members of any aboriginal community;

H (b) free of rent or subject to such rents as may be imposed in the grant; and

(c) subject to such conditions as may be imposed by the grant,

and shall be deemed not to confer on any person any better title I than that of a tenant at will.

(3) Nothing in this section shall preclude the alienation or grant or lease of any land to any aborigine.

Section 9

9. No aborigine shall transfer, lease, charge, sell, convey, assign, mortgage or otherwise dispose of any land except with the consent of the Director General and any such transaction effected without the Director General's consent shall be void and of no effect.

Section 15

15. (1) The Director General and any police officer may detain any person found in any aboriginal area, aboriginal reserve or aboriginal inhabited place whose activities he has reason to believe are detrimental to the welfare of any aborigine or any aboriginal community and shall remove any such person from the area, reserve or place within seven days from the date of detaining him.

(2) The Director General or any police officer who detains or removes any person in accordance with subsection (1) shall as soon as possible report all the circumstances in writing to the Minister.

[11] In this case there was no such approval or recognition of the land in question being an "aboriginal inhabited place", I therefore decided that the action of the Land Office in refusing water and electricity supply was appropriate in the circumstances of the case and I dismissed the application of the applicants with cost.